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December 1, 2016

VIA ECF

Hon. David E. Peebles
U.S. Magistrate Judge
Federal Building and U.S. Courthouse
100 S. Clinton Street
Syracuse, New York 13261

Re: *Rudd, et al. v. T.L. Cannon Corporation, et al.*, Civil Action No. 3:10-cv-00591-TJM-DEP

Dear Judge Peebles:

Pursuant to Federal Rules of Civil Procedure 37(b) and 41(b), and this Court's inherent authority to enforce lawfully-issued orders, Defendants respectfully request that Your Honor recommend to Senior District Judge McAvoy that the claims of twenty-three opt-in plaintiffs be dismissed from this action, with prejudice, for failure to comply with their discovery obligations and multiple orders of this Court.

Defendants directed written discovery, including document requests and interrogatories, to twenty-seven opt-in plaintiffs. Defendants also sought to depose six opt-in plaintiffs.[1] On September 13, 2016, this Court ordered the opt-in plaintiffs to comply with their discovery obligations, and that "[f]ailure to comply... will result in my recommendation to Senior District Judge Thomas J. McAvoy that the non-compliant FLSA opt-in plaintiffs be dismissed from the action." (Docket No. 197). On September 19, 2016, this Court issued a text order directing three more of the opt-in plaintiffs to sit for deposition, and warned again that failure to comply will cause Your Honor to recommend that such plaintiffs be dismissed. (Docket No. 199). On October 12, 2016, this Court issued a third order, directing four more opt-in plaintiffs sit for deposition. (10/12/16 Text Order).

The close of discovery deadline was November 30, 2016. (Docket No. 209). Despite their discovery obligations and this Court's multiple orders, to date, twenty-three of the twenty-seven opt-in plaintiffs from whom Defendants sought discovery failed to comply with their written discovery obligations and/or appear for deposition.[2] Accordingly, Defendants respectfully request that this Court recommend to Judge McAvoy that all claims of each of the twenty-three below listed non-compliant FLSA opt-in plaintiffs be dismissed with prejudice:

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[1] All of the opt-in plaintiffs that Defendants sought to depose were also among the twenty-seven opt-in plaintiffs from whom Defendants sought written discovery.

[2] Only three of the twenty-seven opt-in plaintiffs complied. Another opt-in plaintiff (Teresa Olivapotenza) withdrew from the case after Defendants sought to take her deposition. (Docket No. 210).

Amy Barber

- This Court ordered Amy Barber to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Amy Barber has failed to provide written responses to Defendants' First Request for Production.[3]

Amanda Blesinger

- This Court ordered Amanda Blesinger to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Amanda Blesinger has failed to provide written responses to Defendants' First Request for Production, and failed to produce any documents in response to Defendants' First Request for Production.

Mary A. Brooks

- This Court ordered Mary A. Brooks to produce responses to Defendants' document requests and a verification page for her interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Mary A. Brooks has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for her interrogatory responses.
- This Court also ordered Mary A. Brooks to make herself available for deposition by October 7, 2016. (Docket No. 197).
- To date, Mary A. Brooks has refused to make herself available for deposition.

Teresa Congiusti

- This Court ordered Teresa Congiusti to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Teresa Congiusti has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

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[3] Amy Barber did appear for deposition and brought documents with her to the deposition. That being said, without written responses to Defendants' document requests, Defendants do not know whether Ms. Barber searched for all documents requested by Defendants, produced all documents requested by Defendants, and, most importantly, whether Ms. Barber is withholding any documents requested by Defendants which might contradict her claims in this litigation. For these reasons, Defendants respectfully request that Your Honor recommend the dismissal of Ms. Barber from the litigation.

Lisa M. Cook

- This Court ordered Lisa M. Cook to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Lisa M. Cook has failed to provide written responses to Defendants' First Request for Production, and failed to produce any documents in response to Defendants' First Request for Production.[4]

Rachel Cortesi

- This Court ordered Rachel Cortesi to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Rachel Cortesi has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Davetta Darity

- This Court ordered Davetta Darity to produce responses to Defendants' document requests and a verification page for her interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Davetta Darity has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for her interrogatory responses.
- This Court ordered Davetta Darity to appear for deposition. (10/12/16 Text Order).
- To date, Davetta Darity has refused to make herself available for deposition.

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[4] Lisa M. Cook did appear for deposition, but did not bring any documents with her to the deposition. Without written responses to Defendants' document requests, Defendants do not know whether Ms. Cook searched for all documents requested by Defendants, and, most importantly, whether Ms. Cook is withholding any documents requested by Defendants which might contradict her claims in this litigation. For these reasons, Defendants respectfully request that Your Honor recommend the dismissal of Ms. Cook from the litigation.

Joanna E. Gleason

- This Court ordered Joanna E. Gleason to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Joanna E. Gleason has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Jessica Hagerty

- This Court ordered Jessica Hagerty to produce responses to Defendants' document requests and a verification page for her interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Jessica Hagerty has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for her interrogatory responses.
- This Court also ordered Jessica Hagerty to appear for deposition by October 7, 2016. (Docket No. 197).
- To date, Jessica Hagerty has refused to make herself available for deposition.

Catherine (Hagerty) Perez

- This Court ordered Catherine (Hagerty) Perez to produce responses to Defendants' document requests and a verification page for her interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Catherine (Hagerty) Perez has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for her interrogatory responses.
- This Court also ordered Catherine (Hagerty) Perez to appear for deposition. (10/12/16 Text Order). Ms. Perez no longer lives in New York and, therefore, was not deposed.

Angela M. Harrington (Krezmer)

- This Court ordered Angela M. Harrington (Krezmer) to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Angela M. Harrington (Krezmer) has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Nicole Jerard

- This Court ordered Nicole Jerard to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Nicole Jerard has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Robyn King

- This Court ordered Robyn King to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Robyn King has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Joseph M. Marino

- This Court ordered Joseph M. Marino to produce responses to Defendants' document requests and a verification page for his interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Joseph M. Marino has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for his interrogatory responses.
- This Court also ordered Joseph M. Marino to appear for deposition by October 7, 2016. (Docket No. 199).
- To date, Joseph M. Marino has refused to appear for deposition.

Stacey L. McLeer

- This Court ordered Stacey L. McLeer to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Stacey L. McLeer has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Elena J. Morales

- This Court ordered Elena J. Morales to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Elena J. Morales has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Anthony J. Pacheco

- This Court ordered Anthony J. Pacheco to produce responses to Defendants' document requests and a verification page for his interrogatory responses by September 30, 2016. (Docket No. 197).
- To date, Anthony J. Pacheco has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to produce a verification page for his interrogatory responses.

Amanda Resue

- This Court ordered Amanda Resue to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Amanda Resue has failed to provide written responses to Defendants' First Request for Production, and failed to produce any documents in response to Defendants' First Request for Production.[5]

Jill Scalzo

- This Court ordered Jill Scalzo to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Jill Scalzo has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

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[5] Amanda Resue did appear for deposition, but did not bring any documents with her to the deposition. For the same reasons set forth in footnote 4, *supra*, Defendants respectfully request that Your Honor recommend that Ms. Resue be dismissed from the litigation.

Meghan K. Smith

- This Court ordered Meghan K. Smith to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Meghan K. Smith has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Meghan A. Tuma (Zafuto)

- This Court ordered Meghan A. Tuma (Zafuto) to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Meghan A. Tuma (Zafuto) has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

Tara A. Werner

- This Court ordered Tara A. Werner to appear for deposition by October 7, 2016. (Docket No. 199).
- To date, Tara A. Werner has refused to appear for deposition.

Johnathan M. Williamson

- This Court ordered Johnathan M. Williamson to produce answers and a signed verification in response to Defendants' First Set of Interrogatories by September 16, 2016, and to produce responses to Defendants' document requests by September 30, 2016. (Docket No. 197).
- To date, Johnathan M. Williamson has failed to provide written responses to Defendants' First Request for Production, failed to produce any documents in response to Defendants' First Request for Production, and failed to respond in any way to Defendants' First Set of Interrogatories.

As evidenced by the above, these opt-in plaintiffs have failed to meet their discovery obligations and comply with this Court's order(s). As a result, Defendants are significantly handicapped in their ability to defend against these plaintiffs' claims, specifically, and plaintiffs' class allegations, generally. Their refusal to cooperate, in the face of explicit warning by this Court that their failure to respond to Defendants' discovery would result in dismissal, coupled with the inherent prejudice to Defendants in being unable to probe plaintiffs' allegations through written discovery and/or deposition, and to garner the basic information necessary to defend against their claims, warrants, at a bare minimum, dismissal of the claims brought by the above plaintiffs. *See* Docket No. 67; *accord Odle v. City of New York,* 2010 WL 1528548 (E.D.N.Y. March 26, 2010).

Accordingly, Defendants respectfully request that Your Honor recommend to Judge McAvoy the dismissal with prejudice of all claims of: Amy Barber, Amanda Blesinger, Mary A. Brooks, Teresa Congiusti, Lisa M. Cook, Rachel Cortesi, Davetta Darity, Joanna Gleason, Jessica Hagerty, Catherine Hagerty Perez, Angela M. Harrington (Krezmer), Nicole Jerard, Robyn King, Joseph M. Marino, Stacey L. McLeer, Elena J. Morales, Anthony J. Pacheco, Amanda Resue, Jill Scalzo, Meghan K. Smith, Meghan A. Tuma (Zafuto), Tara A. Werner, and Johnathan M. Williamson.

Respectfully submitted,

/s/ Jessica F. Pizzutelli

Jessica F. Pizzutelli

cc: All Counsel of Record (via ECF)

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